

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
v. : No. 18 Cr. 578 (JS)
:
PATRICE RUNNER, :
:
Defendant. :
:
----- X

DEFENDANT'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS

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VOIR DIRE QUESTIONS

Please inform the Court if your answer to any of the following questions is "yes." If you would prefer not to give your answer in open court, let me know and we can hear you at the sidebar.

Preliminary Questions

1. Trial is estimated to take X weeks. Do any of you have any travel plans or important events during that period that would make serving a genuine and undue hardship?
2. Do any of you have a problem with your hearing or vision that would prevent you from giving your full attention to all of the evidence at this trial?
3. Are any of you taking any medication or do you have any health-related problems that would prevent you from giving your full attention to all of the evidence at this trial?
4. Do any of you have trouble understanding or reading English?
5. Do any of you have any religious, philosophical, moral or other beliefs that would make you unable to render a fair and impartial verdict based upon the law and the evidence?
6. What is the town or neighborhood where you currently live?
7. What is the highest level of education you've completed? (If college/graduate: What was your degree in?)
8. How old are you?
9. Where do you work and what do you do there? (What are your specific responsibilities at work?)
10. Are you married? If so, how long?
11. Do you have grown children?
 - (a) If yes, what are their ages.
 - (b) If they are working, what do they do?
12. Other than a partner and/or children, does anyone else live with you in your household? If yes, who?

Prior Jury Service

13. Have you ever participated in the jury selection process before? When? Was it in state or federal court?
14. Was it a civil or criminal trial, or a Grand Jury?
15. Were you selected to be on the jury?
16. Without saying what the verdict was, did you reach a verdict?

17. Would your previous jury experience influence you in any way in this case?

Personal Knowledge of the Case

18. The defendant in this case is Mr. Patrice Runner. Do you know or have you had dealings, directly or indirectly, with Mr. Runner or any of his associates? Do any of your relatives, friends, or associates, know him?

19. Before today, had you seen, heard, or read anything about Mr. Runner, the prosecution of this case, or the charges in the Indictment? [If yes, then the Court is requested to ask the following at sidebar: What do you remember hearing and how/from where did you learn this information (friend, media, website, etc.)? If media, what source? Do you have an opinion about Mr. Runner's guilt based on this information?]

20. Mr. Runner is represented by James Darrow and Charles Millioen of the Federal Defenders of New York. They will be assisted by paralegal Andres Leland and investigator Sarah Howard. Do any of you know any of them? Have you, any of your relatives, or any of your close friends had any dealings with them or individuals in their office?

21. The Government is represented here by the United States Department of Justice. Department of Justice attorneys Joshua Burke, Charles Dunn, Rachel Baron, and Ann Entwistle will try this case. Have you, any of your relatives, or any of your close friends ever had any dealings with them or individuals in their office?

22. I am now going to read a list of names of individuals who may testify or be mentioned during trial. Please raise your hand if you know any of these people, or if you or any of your relatives, friends, or associates have had any dealings with them directly or indirectly:

[Counsel will supply names]

23. Some of the conduct at issue in this case took place in various locations, including:
[Counsel will supply locations] Are any of you familiar with those areas?

Prior Exposure to the Judicial System

24. Have you or any of your close friends or relatives been involved in or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you or any of your close friends or relatives ever been questioned in any matter by any federal, state or local law enforcement authorities?

25. Have you or any of your close friends or relatives ever been a witness or a complainant in any hearing or trial?

26. Have you, any member of your immediate family, or any of your close friends ever been arrested for, charged with, or convicted of, a crime? [What crime? Do you believe that those charges were fairly brought? Do you believe that they were treated fairly? Would those experiences affect your ability to be fair and impartial?]

27. Have you, or your close friend or family member, ever been the victim of a crime? [What crime? Were you satisfied with the response of law enforcement authorities? Do you think this experience would impact your ability to be impartial in this case?]

Relationship with Government

28. Do you, or any relative or close friend, work in law, law enforcement, the justice system, or the courts? [In what capacity? Does the nature of that work impact your ability to be fair and impartial in this case?]

29. Have you had any negative or positive contact with anyone in law, law enforcement, the justice system, or the courts that might influence your ability to evaluate this case? [Describe those experiences (at sidebar). Will those experiences impact your ability to be a fair and impartial juror in this case?]

30. Have you, or anyone close to you, ever applied for a job in the U.S. Attorney's Office, the U.S. Department of Justice, the Federal Bureau of Investigation, or any other law enforcement agency, private security, or private investigations? [Is there anything about that experience that might influence your ability to evaluate this case?]

31. Do any of you know, or have any association—professional, business, or social, direct or indirect—with a prosecuting agency like the U.S. Attorney's Office or a District Attorney's Office, a victim assistance organization, a neighborhood watch group, or with any law enforcement agency?

32. Have you, or anyone close to you, ever worked for the United States Postal Service? [If so, in what capacity did you or someone close to you work for USPS? Is there anything about that experience that might influence your ability to evaluate this case, where the USPS conducted the investigation against Mr. Runner?]

Ability to Render a Fair and Impartial Verdict in this Case

33. Do you believe that our criminal justice system improperly favors defendants? Do you have any strong feelings about prosecutors, defense attorneys or defendants generally?

34. Is there anything about the charges in this case that would cause you to be unable to render a fair and impartial verdict?

35. Have you, a family member, or close friend, ever been a victim, perpetrator, or otherwise involved in an incident involving fraud? [What is the nature of that incident(s)? Does the nature of that incident make it difficult for any of you to render a fair verdict?]

36. Do you currently or have you previously held any care responsibilities for elderly parents, relatives or friends?

37. This case involves allegations of fraud against elderly witnesses. Does the nature of that alleged conduct make it difficult for any of you to render a fair verdict?

38. Do you have any strong feelings about marketing directed towards elderly consumers?

39. Have you ever worked in direct mail marketing? [If yes, what did you do?]
40. What feelings, if any, do you have about receiving unsolicited mail from marketers?
41. Have you ever purchased or used astrological services, such as a psychic readings or horoscopes? [If so, what was the nature of the services? Did that experience cause you to have any bias for or against astrological services?]
42. Do you have any strong feelings for or against astrological services, such as psychic readings or horoscopes?
43. Do you have any religious or spiritual beliefs that cause you to be biased for or against astrological services, such as psychic readings or horoscopes?
44. Have you, a family member, or close friend ever submitted a complaint to the Better Business Bureau? [If yes, can you please describe the nature of the complaint and how it resolved? If you heard evidence of Better Business Bureau complaints, would that make you unable to render a fair and impartial verdict in this case?]
45. The law does not criminalize lying to sell a product if the lie is not material, meaning it would not affect a reasonable person's evaluation of a sales proposal. Will anyone have a problem following the law if you are instructed that lying, by itself, is not fraud?
46. The government must prove beyond a reasonable doubt that Mr. Runner intended to defraud people. A defendant's use of false representations that do not go to the quality, adequacy, or price of goods does not constitute fraud. Will anyone have a problem following the law that false representations, by themselves, do not establish an intent to defraud beyond a reasonable doubt?
47. Is there any other experience that you, a relative, or close friend has had that may affect your ability to be fair and impartial in this case?
48. Have you ever been involved in an organization, a social cause, a protest or demonstration that advocated on behalf of crime victims in any manner? [If so, what is the nature of the involvement? Does that involvement make it difficult for you to render a fair and impartial verdict in this case?]

Views on Certain Witnesses

49. The witnesses in this case may include law enforcement witnesses. Would you be more likely to believe a witness merely because he or she is a member of a law enforcement agency? Would you be less likely to believe a witness merely because he or she is a member of a law enforcement agency?

Function of the Court and Jury/Presumption of Innocence/Burden of Proof

50. Under our system of law, the jury determines the facts and the Court determines the law. These two areas are separate and distinct. You are the sole judge of the facts. At the end of the case, the judge will instruct you on the law. You are required to accept the law as the judge

explains it to you, even if you disagree with this explanation of the law. It will be your job to determine the facts under the judge's explanation of the law. You may not substitute your notion of what the law is or what you think it should be. Do you feel that you are either unwilling or unable to apply the law as the Court explains it to you?

51. A fundamental principle of our legal system is that persons charged with a criminal offense are presumed innocent unless the Government proves their guilt beyond a reasonable doubt. Mr. Runner is presumed to be innocent of the charges against him. That means that, as he sits before you today, he is presumed to be innocent. The mere fact that Mr. Runner has been charged with a crime is not proof or evidence that he committed a crime. Mr. Runner does not need to produce any evidence whatsoever to prove his innocence. He has no burden of proof. Instead, the Government must prove that he is guilty beyond a reasonable doubt and that burden never shifts to the defense at any point throughout the trial. Does anyone expect Mr. Runner to present evidence to prove his innocence? [If so, do you feel like this expectation will make you unable to reach a fair verdict if Mr. Runner presents no evidence?]

52. As I have told you, Mr. Runner was charged by Indictment by a Grand Jury. The Indictment is not evidence. It is merely the formal manner of informing the accused of the charges against him. Is there anyone who feels that someone has been arrested and indicted by a Grand Jury is probably guilty?

53. Do any of you have difficulty following the law that Mr. Runner is presumed innocent not only at the outset but that he remains innocent all throughout the trial and even in the jury deliberation room unless the government proves him guilty beyond a reasonable doubt?

54. Does anyone have an opinion as to Mr. Runner's guilt or innocence at this moment?

55. If the Government meets its burden, you must find Mr. Runner guilty. On the other hand, if the Government fails to prove this to you, you must find Mr. Runner not guilty. If you are selected as a juror in this case, would you have difficulty applying this rule of law?

56. You are required by law to make your decision based solely on the evidence or lack of evidence presented in Court, and not on the basis of conjecture, suspicion, sympathy, or prejudice. Would any of you have difficulty accepting and applying this rule of law?

57. It would be improper for you to consider any personal feelings you may have about Mr. Runner's race, ethnicity, religion, national origin, sex, or age. Would any of you have any difficulty putting aside any feelings, positive or negative, about Mr. Runner based on these considerations?

58. It would be improper for you to consider any sympathy you feel for a witness or any personal feelings you may have about any witness's race, ethnicity, religion, national origin, sex, or age. Would any of you have any difficulty putting aside any feelings, positive or negative, about witnesses based on these considerations?

59. Under the law, the question of punishment, if any, is for the Court — that is, for the judge—to decide, so the issue of possible punishment must not enter into your deliberations as to

whether the defendant on trial here has been proven guilty beyond a reasonable doubt. Are any of you unable to accept that instruction?

60. If the government fails to prove a defendant's guilt beyond a reasonable doubt, is there any juror who feels he or she could not render a verdict of not guilty?

61. Proof beyond a reasonable doubt is the highest burden of proof in the United States legal system, and it is imposed on the government when they seek to convict someone of committing a crime. Does anyone think that this burden of proof should be lower meaning should it be easier for the government to convict someone for committing a crime?

Defendant Testifying/Not Testifying

62. It is not Mr. Runner's or his attorneys' responsibility to prove him innocence. Therefore, under the law, Mr. Runner need not testify or offer any evidence and may, in fact, stay silent because he is presumed innocent. If he does not testify, you may not consider that fact in any way in reaching a decision as to whether Mr. Runner is guilty or not guilty. Would anyone expect to hear Mr. Runner testify?

63. Would anyone find it difficult to find Mr. Runner not guilty if he does not call witnesses on his own behalf?

Additional Background

64. How many times per week do you read/listen to the news? How do you usually get your news? List all major sources, including specific newspapers, radio programs, television programs and/or Internet sites.

65. Do you belong or have you belonged to any social clubs, organizations or volunteer groups, including any groups that take positions on social or legal issues? If yes, have you ever held a position of leadership in any organization or group?

Summary Question

With these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from the prior questions, do you have any doubt in your mind that you will not be able to serve conscientiously, fairly, and impartially in this case, and render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?